

EXHIBIT

19

UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

----- X
MAGTEN ASSET MANAGEMENT CORPORATION and
LAW DEBENTURE TRUST COMPANY OF NEW YORK,
Plaintiffs,

-vs-

NORTHWESTERN CORPORATION,
Defendant.

Civil Action No. C.A. No. 04-1494 (JJF)

----- X
MAGTEN ASSET MANAGEMENT CORP.,
Plaintiff,

-vs-

MICHAEL J. HANSON and ERNIE J. KINDT,
Defendants.

Civil Action No. C.S. No. 05-499 (JJF)

----- X

DATE: November 13, 2007

TIME: 9:00 a.m.

Deposition of PAUL A. MARCUS, held at
the offices of Curtis, Mallet-Prevost, Colt &
Mosle, 101 Park Avenue, New York, New York,

1 - PAUL A. MARCUS -

2 contained in this paragraph with anyone from Fried,
3 Frank?

4 A. Not to my recollection, no.

5 Q. Did you ever discuss the allegations in
6 this paragraph with anybody else at Huron?

7 A. Not to my recollection, no.

8 Q. Were you ever asked or did you ever
9 understand that you were being asked to offer any
10 opinions with respect to the allegations contained
11 in Paragraph 51?

12 MR. KAPLAN: Objection to the form.

13 A. I was never asked to perform any form of
14 insolvency analysis.

15 MR. PIZZURRO: Mark this as Exhibit 3.

16 (Whereupon, Marcus Exhibit 3 was marked
17 at this time.)

18 Q. Mr. Marcus, you've just been handed a
19 document which is marked as Exhibit 3.

20 Do you recognize this as your report
21 submitted in connection with this matter?

22 A. Generally I recognize it. And I'll
23 assume all of the pages were appropriately copied,
24 and it is my report, yes.

25 Q. In connection with issuing this report,

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2 A. I guess I can't answer that because if
3 somebody were to ask me a question and phrase it a
4 certain way and ask me for my opinion, I might
5 offer that opinion. But I have written a report
6 that summarizes the things that I've analyzed to
7 date and opinions that I'm setting -- proactively
8 setting forth. But were you to ask me my opinion
9 today on something, if I could give it, I would
10 give it.

11 Q. Have you changed any of the opinions as
12 they're set forth in Marcus Exhibit 3 as of today?

13 A. I'm a bit confused by your question.

14 Q. I want to know if your opinion as
15 expressed in the report or any one of them has
16 changed in any way since September 19th, the date
17 of the report, until you're sitting here today?

18 A. I understand now. No, they have not.

19 Q. Mr. Marcus, you're a CPA, are you not?

20 A. I'm not, no.

21 Q. You are not a CPA?

22 A. I'm not a CPA.

23 Q. Do you consider yourself an expert on
24 the Montana Public Service Commission?

25 A. Can you be more specific what you mean

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2 by an expert on the Commission?

3 Q. No. That's as specific as my question
4 is. It's pretty specific.

5 A. Let me try to answer it then. I can
6 tell you that I have extensive experience working
7 in financing utility companies and reviewing
8 opinions of commissions throughout the country in
9 many jurisdictions. I have experience in reviewing
10 other people's interpretation and understanding of
11 how those commissions function. And I would
12 consider myself an expert in interpreting and
13 understanding how commissions work, what positions
14 they put forth, their interests, and the
15 constituencies that they represent.

16 Q. Do you have any experience in dealing
17 with the Montana Public Service Commission?

18 A. I don't recall.

19 Q. Have you ever offered opinion testimony
20 as an expert about any aspect of the Montana Public
21 Service Commission?

22 MR. KAPLAN: Objection to the form.

23 A. I have not.

24 Q. Have you ever testified as an expert
25 before the Montana Public Service Commission?

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2 A. No, I have not.

3 Q. Have you ever testified as an expert
4 about any commission regulating utilities at a
5 state level?

6 A. I have not.

7 Q. Have you ever testified as an expert
8 about any utility regulatory commissions at a
9 federal level?

10 A. I have not.

11 Q. Sir, are you familiar with the statutory
12 authority or the statutory structure pursuant to
13 which the Montana Power -- strike that.

14 -- Montana Public Service Commission
15 derives its authority?

16 A. Not that I recall, no.

17 Q. Are you familiar with any regulations
18 governing the authority or procedures of the
19 Montana Public Service Commission?

20 A. Can you repeat that again, please?

21 MR. PIZZURRO: Can you read the
22 question, please?

23 (The question requested was read back by
24 the reporter.)

25 A. Yes.

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2 Q. And what are those regulations?

3 A. I can't specifically articulate which
4 regulations I've read. I have read through their
5 procedural announcements, their rulings on certain
6 cases; so from that perspective, I've actually seen
7 some of their rulings.

8 MS. BEATTY: Excuse me. Mr. Marcus, can
9 you speak up a little bit? You're hard to hear.

10 THE WITNESS: Sorry.

11 Q. Have you ever spoken to counsel about
12 the regulations governing the authority of the
13 Montana Public Service Commission?

14 MR. KAPLAN: Objection to the form.

15 A. I don't recall that specific discussion.

16 Q. Other than in this case, what rulings of
17 the Montana Public Service Commission have you
18 reviewed? And by "this case," what I mean are any
19 rulings that the Montana Public Service Commission
20 made in connection with either the acquisition of
21 the Montana Power assets by Northwestern or any
22 subsequent approvals of financings that
23 Northwestern did which might have been required by
24 the Montana Public Service Commission.

25 A. I'm sorry?

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2 Q. Better question.

3 Other than the proceedings and decisions
4 of the Montana Public Service Commission, which are
5 referenced in your report which is Exhibit 3, what
6 other rulings and cases of the Montana Public
7 Service Commission have you reviewed?

8 A. None that I recall.

9 Q. So is it safe to say --

10 MR. KAPLAN: Just for the record, I'm
11 not sure you cited the right exhibit. I'm not sure
12 it's Exhibit 3.

13 MR. PIZZURRO: I believe it is.

14 Q. Could you tell us -- when I say
15 Exhibit 3, I'm talking about Exhibit 3 in this
16 deposition, the deposition of today.

17 MR. KAPLAN: Okay. The deposition.

18 MR. PIZZURRO: I didn't mean any exhibit
19 to the report.

20 Q. What is the scope of the authority of
21 the Montana Public Service Commission?

22 MR. KAPLAN: Objection to the form. Are
23 you asking for a legal interpretation of their
24 scope of authority? What are you asking this
25 witness to testify about?

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2 MR. PIZZURRO: I'm asking the witness
3 to -- the witness testified he's reviewed, I guess
4 now, only what happened with respect to a couple of
5 instances involving Northwestern but he's offered
6 testimony concerning Montana Public Service
7 Commission. I want to know what the scope of the
8 authority of the Commission is.

9 MR. KAPLAN: I'm going to object. That
10 calls for a legal conclusion.

11 MR. PIZZURRO: I wouldn't disagree with
12 you but I would like an answer from this witness
13 anyway.

14 A. Well, first, you just made a statement
15 on the record which is talking about Montana --
16 what I've said to you in my prior answer is that I
17 have a lot of experience working with commissions.

18 I've financed over a billion dollars
19 worth of utility financing.

20 I've had to assess many different
21 commissions' authorities and their ability to work
22 with the utilities in those states and fully
23 recognize that regardless of whatever the legal
24 scope is, is that the commissions have an
25 obligation to protect the rate payers and the

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2 constituents within their states. And I know that
3 from having worked with regulators in many
4 different states and having seen their opinions and
5 having seen how they interact with many different
6 utilities.

7 Q. Mr. Marcus, my question was: What is
8 the scope of the authority of the Montana Public
9 Service Commission?

10 If you want to say, "I don't know,"
11 that's fine. I would like an answer to that
12 question.

13 MR. KAPLAN: I still have an objection
14 to that question.

15 A. I can't give you a legal interpretation,
16 but I can give you an interpretation I have as a
17 layperson, which is that all commissions,
18 regardless of what state they're in, have an
19 obligation to protect the constituents within those
20 states -- protect the rate payers and consumers in
21 those states.

22 Q. I didn't ask you what their obligations
23 were. I asked what the scope of authority of the
24 Montana Public Service Commission was, what
25 authority does it have?

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2 is the contract that the QUIPS had with
3 Northwestern, that they had a right to any
4 treatment better than they received in the asset
5 transfer and liability assumption?

6 MR. KAPLAN: Objection to the form.

7 A. I'm not sure I understand the question.

8 Q. Your testimony as to how the QUIPS
9 holders' interests were adversely affected was that
10 ultimately they received little to nothing.

11 I assume you're speaking about what
12 happened after Northwestern filed for Chapter 11
13 and the Plan was approved, correct?

14 A. That's my recollection, yes.

15 Q. Okay. The reason for that was because
16 the QUIPS holders became creditors of Northwestern
17 and were not only unsecured but ended up being the
18 most junior creditors, all other debt, even
19 subsequent debt, being senior to the QUIPS holders.

20 Isn't that why they ended up in the
21 position they did in the bankruptcy?

22 MR. KAPLAN: Objection to the form.

23 A. I'm not sure I can give you an answer to
24 that.

25 Q. Well, do you know whether or not the

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2 right to contact a Trustee of the bonds, to see if
3 anything could be done as a group. I know that
4 everyone has the right to go talk to the
5 commissions to try to persuade them that the asset
6 transfer would be problematic.

7 You've asked me for things they could
8 do. Those are definitely things that they could
9 do.

10 Q. Did you review the opinion of Judge
11 Case, which was issued in or about August of 2004,
12 on motion to dismiss that was made in this action
13 by Northwestern? Do you recall, sir?

14 A. I don't recall seeing that.

15 Q. Back in that same sentence when you say,
16 "impeded by the attempts of security holders and
17 regulators."

18 Other than the Montana Public Service
19 Commission, were there any other regulators that
20 you were referring to?

21 A. At one point I was thinking about some
22 of the possible regulators within the state in
23 terms of Attorney Generals, things of that nature,
24 but the majority of my focus was on the Montana
25 Public Utility Commission.

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2 Q. Was that because you had reviewed some
3 of the statements that had been made by the
4 Commissioners in connection with the approval of
5 the \$390 million secured financing that was
6 accomplished in January and February of 2003?

7 MR. KAPLAN: Objection to the form.

8 A. I'm not sure what you're asking me.

9 Q. You say the majority of your focus was
10 on the Montana Public Utility Commission. I think
11 it's Public Service Commission, not the Public
12 Utility Commission.

13 At any rate, I'm asking if your focus
14 was because you actually reviewed some statements
15 made in proceedings involving the MPSC in
16 connection with Northwestern?

17 A. No. My focus was on the Commission
18 because I have experience with utility companies
19 and commissions and know what an integral role they
20 play in all of these things. I did ask to look at
21 any rulings they might have made, and I did look at
22 that one as part of my analysis.

23 Q. Okay. You know that the MPSC had
24 already approved the acquisition of the Montana
25 Power assets by Northwestern in early 2002,

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2 correct?

3 A. I'd have to go back to the specific
4 order, but my general recollection is that they
5 approved it, yes.

6 Q. You also knew that that approval covered
7 whether or not Northwestern kept the assets in a
8 wholly owned subsidiary or moved them to the parent
9 company to operate as a division along with
10 Northwestern's other utility assets; is that
11 correct?

12 A. My recollection is that the approval was
13 for either a separate subsidiary or as a division.

14 Q. Do you have any basis for understanding
15 whether having given that approval, the MPSC had
16 the authority or the ability to step in and impede,
17 as you've put it, the asset transfer?

18 MR. KAPLAN: Objection to the form.

19 A. All I can tell you is that the
20 commissions -- from my understanding of commissions
21 in general, is that they have broad authority over
22 the utilities in their states. And that to the
23 extent that this information, which is material in
24 which they commented on extensively after the fact,
25 if that information had been in the public domain,

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2 that they would have done whatever they could have
3 to protect their constituents. And to the extent
4 that that meant taking action, I believe that they
5 would have done that.

6 Q. My question wasn't whether they wanted
7 to do or not wanted to do.

8 My question is: Do you know what they
9 had the authority to do, yes or no?

10 A. I haven't made a legal determination of
11 what their authority is.

12 Q. You don't know, do you?

13 MR. KAPLAN: Objection. Asked and
14 answered.

15 Q. Withdrawn.

16 Do you know whether the Montana Public
17 Service Commission in its history has ever
18 rescinded approval of a transaction once that
19 approval had already been given? Ever?

20 A. That's a bit of a loaded question in
21 that if you're asking me for a good transaction,
22 did they rescind it? I don't know.

23 I don't know if there have been any
24 transactions where material information was omitted
25 or misrepresented and they were then put in a

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2 Q. Well, why didn't the MPSC just say,
3 "Give the assets back to your subsidiary
4 Northwestern Energy LLC"?

5 MR. KAPLAN: Objection.

6 A. At that point, I don't know if they had
7 the legal ability to do that. I just don't know
8 the answer to your question.

9 Q. You also don't know whether they had the
10 legal ability to impede the going flat transaction
11 having given their approval to the transaction in
12 January of '02, correct?

13 MR. KAPLAN: Objection.

14 Q. I'm just trying to probe the limits of
15 what your knowledge is concerning the scope of
16 authority and ability of the MPSC to act. You
17 offer an opinion they would have impeded.

18 A. That's correct.

19 Q. You don't know whether they could have
20 ordered the assets given back.

21 That's your testimony, correct?

22 A. My testimony is I don't know the legal
23 steps that they can take. I can tell you that my
24 experience has seen a variety of different measures
25 that utility commissions have taken to protect the

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2 Northwestern made?

3 MR. KAPLAN: Objection to the form. Are
4 you asking any specific filings?

5 Q. Any. Did you review the Petition?

6 A. I don't specifically recall.

7 Q. Did you review the Disclosure Statement?

8 A. I don't recall that.

9 Q. Did you review the Plan?

10 A. I don't recall.

11 Q. What caused the company to go bankrupt?

12 MR. KAPLAN: Objection to the form.

13 A. As I said, I haven't seen -- I don't
14 recall seeing the documents, so I might have known
15 that at one point. I just don't know it now.

16 Q. You don't know?

17 A. I don't know right now.

18 Q. Sir, let me direct your attention to
19 Page 43 of the report.

20 Starting with Paragraph 108 and going on
21 to Paragraph 117, do you see that, sir, under the
22 heading -- under "\$390 Million CSFB Financing"?

23 A. I do.

24 MR. KAPLAN: If you need to read the
25 paragraph, you should.

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2 Q. When you say "known to the public," that
3 would include information known to the rating
4 agencies as of mid-April 2003?

5 MR. KAPLAN: Objection.

6 A. I'm not sure what your question is.

7 Q. When you say "to the public," do you
8 include the rating agencies as part of the public?

9 A. When I say "public," I mean the public
10 domain, so anyone who wanted to find that out
11 could. It would include security agencies, rating
12 agencies, security analyst, you and I, people.

13 Q. Lenders, investors, would that be part
14 of the public domain?

15 A. It might or might not be.

16 Q. Why might it not be?

17 A. I take that back. To the extent the
18 information is in the public domain, then anybody
19 who wants to see it can see it. I misunderstood
20 your question. I'm sorry. It's been a long day.

21 Q. When the disclosures were made in April
22 of 2003, do you have an opinion as to whether
23 after -- after those disclosures were made, that
24 the bankruptcy of Northwestern was an
25 inevitability?

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2 MR. KAPLAN: Objection to the form.

3 A. I have not analyzed that, no.

4 Q. Earlier in your deposition I believe you
5 testified -- and if I got it wrong, please correct
6 me, Mr. Marcus.

7 I believe you testified that
8 Northwestern ceased paying a dividend.

9 A. I don't believe I testified to it. I
10 believe in February of 2003 they stopped paying
11 their dividend.

12 Q. And if I understood your testimony
13 earlier today, you said that when a public utility
14 stops paying a dividend, that inevitably they go
15 into bankruptcy.

16 A. I believe my testimony was that the
17 company's financial advisor, Bear, Stearns in a
18 presentation to them, made the comment that it
19 would be a bad signal because the utilities that
20 they were aware of that took their dividend to zero
21 went bankrupt.

22 Q. Would you -- do you agree with that
23 observation by Bear Sterns that you just recited?

24 A. I have no reason to disagree with it.

25 Q. Throughout your expert report,

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2 today.

3 Q. Either in preparation of your expert
4 report or in preparation for your deposition today,
5 did you ever review the joint applications
6 submitted by the sellers and Northwestern
7 Corporation for the acquisition of Montana Power
8 LLC? That's the joint application to the Montana
9 Public Service Commission.

10 A. I don't recall that.

11 Q. I didn't see it listed in the exhibit to
12 your expert report.

13 A. Then I don't believe I would have.

14 Q. Did you review the transcript of the
15 proceedings related to the joint application for
16 the acquisition of Montana Power LLC by
17 Northwestern?

18 A. I don't believe I did.

19 Q. This afternoon in response to a question
20 from Mr. Pizzurro you stated that the Montana
21 Public Service Commission could have ring fenced
22 the Montana utility assets; is that correct?

23 A. I think I used the term that someone
24 else had used in the sense that he asked what they
25 could have done, and it was a description of their

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2 Q. I think I know that you don't know.

3 MR. KAPLAN: Objection to the extra
4 commentary.

5 Q. Withdrawn.

6 Mr. Marcus, have you ever advised a
7 client on financing matters involving a company
8 regulated by the Montana Public Service Commission?

9 A. I might have. I just don't recall.

10 Q. In what capacity might you have done
11 that?

12 A. Most specifically, it would have been at
13 the time when I was a lender at Bank of America.
14 We lent money to companies in the utility industry.

15 I was doing that out of their Chicago
16 office so I was covering utilities all throughout
17 the midwest. Montana was not specifically a state
18 that was covered in our geographical area, although
19 I'm just not sure I remember whether or not some of
20 the utilities that I was working with would have
21 had some holding in Montana that would have caused
22 Montana to regulate them.

23 Q. But nothing that stands out in your mind
24 sitting here today?

25 A. That's correct.

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2 Q. Do you know what utilities operate in
3 Montana, regulated utilities?

4 A. Sitting here today, no.

5 Q. This morning I think you had testified,
6 if I took my note correctly, that you had reviewed
7 certain procedural pronouncements of the Montana
8 Public Service Commission.

9 Do you recall that testimony?

10 A. If by the "procedural pronouncements"
11 you're talking about the final order to the
12 dissenting order on the \$390 million bond offering,
13 I did review that.

14 Q. That would have been the order that came
15 out in the early part of 2003?

16 A. I believe that was the time frame.

17 Q. And that's the same order in which you
18 quote from the dissenting opinion of Commissioner
19 Brainard, B-R-A-I-N-A-R-D; is that correct?

20 A. That would be correct.

21 Q. Other than that one particular order,
22 did you review any other orders of the Montana
23 Public Service Commission?

24 A. I believe there were other things. I
25 just don't recall what they were specifically.

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2 certain situations and my recollection is that I
3 saw some other things from earlier in the time
4 period from the Commission. I just can't identify
5 them sitting here.

6 Q. Would they have been other things
7 related to the docket whose subject was the
8 acquisition of Montana Power LLC by Northwestern?

9 A. That would be my general understanding,
10 yes.

11 Q. Do you have any recollection of looking
12 at any orders of the Montana Public Service
13 Commission dealing with dockets involving regulated
14 utilities other than Northwestern Corporation?

15 A. I did not, no.

16 Q. How did you locate those other orders?
17 Did you find them or your staff find them or were
18 they given to you?

19 A. My staff provided them to me. I don't
20 know if they independently found those or they
21 requested them from counsel. I just don't know the
22 answer to that.

23 Q. Are there any opinions or orders of the
24 Public Service Commission on which you relied that
25 are not referenced somewhere in your expert report?